

**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

**IN RE: REVOLUTION WIND, LLC
APPLICATION TO CONSTRUCT A
MAJOR ENERGY FACILITY**

)
) Docket No. SB-2021-01
)
)
)
)

**MOTION OF REVOLUTION WIND, LLC FOR PROTECTIVE TREATMENT OF
CONFIDENTIAL INFORMATION**

Revolution Wind, LLC (“Revolution Wind”) hereby requests that the Energy Facility Siting Board (the “Board”) grant protection from public disclosure to certain confidential information submitted by Revolution Wind in its response to Record Request 15.

Specifically, Revolution Wind seeks an order from the Board to protect: (1) certain confidential information regarding historically and culturally sensitive sites that is protected from disclosure under federal law, which Revolution Wind has submitted as part of its alternative route analysis as Attachment EFSB-RR-15-2, and (2) cost information for the potential alternative routes proposed, which is set forth in Attachment EFSB-RR-15-7.

Revolution Wind requests protective treatment of this information, and seeks a determination that this information is not a public record, in accordance with R.I. Gen. Laws § 38-2-2(4)(B). Revolution Wind also hereby requests that, pending entry of that ruling, the Board preliminarily grant Revolution Wind’s request for confidential treatment.

I. BACKGROUND

On December 30, 2020, Revolution Wind filed its Application to Construct a Major Energy Facility with the EFSB. The EFSB held a public hearing on November 2, 2021. During that hearing, the EFSB issued Record Request 15, asking that Revolution Wind “provide a complete preliminary redesign of the onshore transmission cable route assuming use of the

access road to the Davisville substation sufficient to permit a comparison to the design of the onshore transmission cable route that traverses Camp Avenue.” Revolution Wind submitted its response to Record Request 15 on April 15, 2022. That response included Attachment EFSB-RR-15-2, which is an archaeological assessment by the Public Archeology Lab (“PAL”)(the “PAL Report”). The PAL Report includes certain information concerning culturally sensitive areas in the vicinity of the proposed development that is protected from disclosure under federal law. This motion seeks confidential treatment and protection from public disclosure of select, redacted portions of the PAL Report. That response also includes Attachment EFSB-RR-15-7, which is a project cost estimate for the potential alternative route options identified. This motion seeks confidential treatment of the project cost estimate in its entirety as commercially sensitive information that would harm Revolution Wind’s competitive position if it were publicly available.

II. LEGAL STANDARD

The Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.* (“APRA”), establishes the proper balance between “public access to public records” and protection “from disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” Gen. Laws § 38-2-1. Per APRA, “all records maintained or kept on file by any public body” are “public records” to which the public has a right of inspection unless a statutory exception applies. *Id.* § 38-2-3. The Rhode Island Supreme Court has held that when documents fall within a specific APRA exemption, they “are not considered to be public records,” and “the act does not apply to them.” *Providence Journal Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001). The statute provides that such records “shall not be deemed public.” *Id.*

The definition of “public record” under APRA specifically excludes “[r]ecords, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law or rule of court” *Id.* § 38-2-2(4)(S). The definition of “public record” under APRA also specifically excludes “trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.” *Id.* § 38-2-2(4)(B). Further, the court has held that “financial or commercial information” under APRA includes information “whose disclosure would be likely . . . to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Providence Journal Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001).

III. BASIS FOR CONFIDENTIALITY

The redacted portions of the PAL Report provided as Attachment EFSB-RR-15-2 contain the location of culturally sensitive resources and are deemed confidential information. Section 304 of the National Historic Preservation Act, 54 U.S.C. §300101 *et seq.*, (“NHPA”) establishes a set of rules for federal officials and state historic preservation officers to withhold information that would put significant cultural sites at risk of damage, privacy violations, or interference with the traditional cultural or religious practices associated with those specific places. *See* 36 C.F.R. §800.1(c)(providing that “the head of a Federal agency. . . shall withhold from public disclosure information about the location, characters, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners”). The redacted portions of the PAL Report contain this type of information. The confidential locations and language in this document therefore constitute information “required to be kept confidential by federal law or regulation” to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(B); *Kane*,

577 A.2d at 663.

Pursuant to the NHPA, Revolution Wind treats the redacted information as confidential. Revolution Wind does not and has not generally made such information available to the public, other companies, or regulatory bodies, nor is it permitted to do so under federal law. Disclosing this culturally and historically sensitive information publicly as part of the Board's Application review process would impede Revolution Wind's ability to comply with federal law. *See* Gen. Laws § 38-2-2. The redacted information in the PAL Report constitutes information "required to be kept confidential by federal law or regulation" to which the APRA public disclosure requirements do not apply. *See* Gen. Laws §38-2-2(4)(S). Revolution Wind has provided a narrowly redacted public version of the PAL Report to balance the public's interest in access to information with NHPA's confidentiality requirements.

The project cost estimates provided as Attachment EFSB-RR-15-7 constitute confidential commercial information that, if publicly disclosed, would harm Revolution Wind's competitive position. Revolution Wind seeks confidential treatment of this information due to the competitive nature of offshore wind solicitations and the competitive bidding processes involved. Disclosure of the project cost estimate information would provide direct competitors of Revolution Wind with proprietary information that could undermine the ability of the Orsted/Eversource JV to compete effectively in future solicitations. Because the information contained in Attachment EFSB-RR-15-7 is highly sensitive and could harm Revolution Wind's competitive position if disclosed, Revolution Wind respectfully asks the EFSB to maintain its confidentiality.

Revolution Wind therefore respectfully requests that the Board grant protective treatment to the redacted portions of Attachment EFSB-RR-15-2 and the entirety of Attachment EFSB-RR-

15-7 and take the following actions to preserve their confidentiality: (1) maintain the unredacted version of Attachment EFSB-RR-15-2 and the entirety of Attachment EFSB-RR-15-7 as confidential indefinitely; (2) not place any unredacted version of Attachment EFSB-RR-15-2 or the entirety of Attachment EFSB-RR-15-7 on the public docket; and (3) disclose an unredacted version of Attachment EFSB-RR-15-2 and the entirety of Attachment EFSB-RR-15-7 only to the Board, its attorneys, and staff as necessary to review Revolution Wind's Application.

WHEREFORE, Revolution Wind respectfully requests that the Board grant its Motion for Protective Treatment.

Date: April 15, 2022

Respectfully submitted,

Revolution Wind, LLC,
By its attorneys,



Robin L. Main (#4222)
Adam Ramos (#7591)
Christine Dieter (#9859)
Hinckley Allen & Snyder
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
(401) 457-5278
(401) 277-9600 (fax)
rmain@hinckleyallen.com
aramos@hinckleyallen.com
cdieter@hinckleyallen.com

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2022, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos

SB-2021-01 Revolution Wind, LLC Application for Major Energy Facility
Updated October 25, 2021

Name/Address	E-mail
Chairman Ronald Gerwatowski (PUC)	Ronald.Gerwatowski@puc.ri.gov ;
Acting Director Terry Gray (DEM)	terry.gray@dem.ri.gov ;
Associate Director Meredith Brady (DOA)	Meredith.brady@doa.ri.gov ;
Emma Rodvien (PUC)	Emma.Rodvien@puc.ri.gov ;
Patricia Lucarelli (PUC)	Patricia.lucarelli@puc.ri.gov ;
Suzanne Amerault (DEM)	Suzanne.Amerault@dem.ri.gov ;
Maria Mignanelli (DOA)	maria.mignanelli@doa.ri.gov ;
Adam Ramos (Hinckley, Allen, & Snyder, LLP)	aramos@hinckleyallen.com ;
Robin Main (Hinckley, Allen, & Snyder, LLP)	rmain@hinckleyallen.com ;
Christine Dieter (Hinckley, Allen, & Snyder, LLP)	cdieter@hinckleyallen.com ;
Marvin Bellis (Eversource)	marvin.bellis@eversource.com ;
Charles R. Scott	chsco@orsted.com ;
Jeannette Alyward	jalyward@northkingstown.org ;
Town of North Kingstown Town Council	TownCouncil@northkingstown.org ;
Matt Callaghan	matt@callaghanlawri.com ;
George Watson (Robinson Cole)	Gwatson@rc.com ;
Mark Rielly (National Grid)	Mark.rielly@nationalgrid.com ;
Rachel Thomas (National Grid)	Rachel.Thomas@nationalgrid.com ;
Commissioner Nicholas Ucci (OER)	Nicholas.Ucci@energy.ri.gov ;
Christopher Kearns (OER)	Christopher.Kearns@energy.ri.gov ;
Carrie Gill (OER)	Carrie.Gill@energy.ri.gov ;
Becca Trietch (OER)	Becca.Trietch@energy.ri.gov ;
Todd Bianco (PUC)	Todd.Bianco@puc.ri.gov ;
Cindy Wilson-Frias (PUC)	Cynthia.Wilsonfrias@puc.ri.gov ;
Alan Nault (PUC)	Alan.nault@puc.ri.gov ;
Luly Massaro (PUC)	Luly.Massaro@puc.ri.gov ;

Christy Hetherington (DPUC)	Christy.hetherington@dpuc.ri.gov ;
John Bell (DPUC)	John.bell@dpuc.ri.gov ;
Thomas Kogut (DPUC)	thomas.kogut@dpuc.ri.gov ;
Maggie Hogan (DPUC)	Margaret.l.hogan@dpuc.ri.gov ;
Jon Hagopian (DPUC)	jon.hagopian@dpuc.ri.gov ;
Greg Booth (DPUC)	gboothpe@gmail.com ;
Robin Blanton (DPUC)	rblanton@utilityengineering.com ;
Matthew Ouellette (DOT)	Matthew.Ouellette@dot.ri.gov ;
Robert Rocchio (DOT)	Robert.Rocchio@dot.ri.gov ;
Joseph Bucci (DOT)	Joseph.Bucci@dot.ri.gov ;
Jill Nascimento (DOT)	Jill.Nascimento@dot.ri.gov ;
John Paul Loether (HPHC)	johnpaul.loether@preservation.ri.gov ;
Charlotte Taylor (HPHC)	Charlotte.Taylor@preservation.ri.gov ;
Nicole Lafontaine (North Kingstown Planning Board)	NLaFontaine@northkingstown.org ;
Roberta Groch (DOA)	Roberta.Groch@doa.ri.gov ;
Jennifer Sternick (DOA)	Jennifer.Sternick@doa.ri.gov ;
Nancy Lavin (Providence Business News)	Lavin@pbn.com ;
Christian Capizzo (Partridge Snow & Hahn LLP)	ccapizzo@psh.com ;
Christina Hoefsmit (DEM)	Christina.Hoefsmit@dem.ri.gov ;